



STATE BOARD OF EQUALIZATION

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March 14, 2003

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Executive Director

Dear Interested Party :

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the March 26, 2003 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1630, *Packers, Loaders, and Shippers*.

Action 1 on the Agenda consists of items on which we believe industry and staff are in full agreement.

If you wish to have any consent items (Action 1) discussed fully at the Committee meeting, you must contact a Board Member prior to March 21, 2003, to request removal of the item from the Consent Agenda. In addition, please notify Ms. Charlotte Paliani, Program Planning Manager, after you contact a Board Member's Office. Ms. Paliani may be reached at (916) 324-1825.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/meetings.htm#two>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m. on March 26, 2003** in Room 121 at the address shown above.

Sincerely,

Ramon J. Hirsig
Deputy Director
Sales and Use Tax Department

RJS: caw

Enclosures

cc: (all with enclosures)

Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice Chairman
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable John Chiang, Member, Fourth District
Honorable Steve Westly, State Controller
Ms. Rita Perry, Board Member's Office, First District (MIC 71)
Mr. Neil Shah, Board Member's Office, Third District
Mr. Romeo Vinzon, Board Member's Office, Third District
Mr. Matthew Zylowski, Board Member's Office, Third District
Ms. Margaret Pennington, Board Member's Office, Second District (MIC 78)
Mr. Lee Williams, Board Member's Office, Second District (via e-mail)
Mr. John Thiella, Board Member's Office, Fourth District (MIC 72)
Mr. Steven Kamp, Board Member's Office, Fourth District (MIC 72)
Ms. Marcy Jo Mandel, State Controller's Office
Mr. James E. Speed (MIC 73)
Mr. Timothy Boyer (MIC 83)
Ms. Janice Thurston (MIC 82)
Mr. Warren Astleford (MIC 82)
Mr. Bruce Emard (MIC 82)
Mr. Robert Tucker (MIC 82)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (via e-mail)
Mr. Rey Obligacion (via e-mail)
Ms. Jennifer Willis (MIC 70)
Mr. Dan Tokutomi (via e-mail)
Mr. Dave Hayes (MIC 67)
Ms. Charlotte Paliani (MIC 92)
Mr. Joseph Young (via e-mail)
Mr. Jerry Cornelius (via e-mail)
Mr. Jeffrey L. McGuire (via e-mail)
Mr. Vic Anderson (MIC 40 and via e-mail)
Mr. Larry Bergkamp (via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Laureen Simpson (MIC 50)
Ms. Cecilia Watkins (MIC 50)
Ms. Leila Khabbaz (MIC 50)

AGENDA —March 26, 2003 Business Taxes Committee Meeting
Disposable Temperature Recording Devices (Regulation 1630, Packers, Loaders, and Shippers)

<p>Action 1 — Consent Items Agenda, page 2.</p>	<p>Adopt proposed amendments to Regulation 1630 as agreed upon by staff and interested parties. The proposed amendments add a new subdivision (b)(3) to incorporate the Susan Lorie Tylock Memorandum Opinion, which addresses the application of tax to sales of disposable temperature recording devices.</p>
<p>Action 2 – Authorization to Publish</p>	<p>Recommend publication of proposed amendments to Regulation 1630, <i>Packers, Loaders, and Shippers</i>, as adopted in the above action.</p> <p>Operative Date: none Implementation: 30 days following OAL approval</p>

AGENDA —March 26, 2003 Business Taxes Committee Meeting
Disposable Temperature Recording Devices (Regulation 1630, Packers, Loaders, and Shippers)

Action Item	Staff and Industry's Proposed Regulatory Language
<p>Action 1 — Consent Items</p> <p>1630 (b)(3) Application of Tax to Disposable Temperature Recording Devices.</p>	<p>Regulation 1630. PACKERS, LOADERS, AND SHIPPERS</p> <p>(b) APPLICATION OF TAX.</p> <p><u>(3) DISPOSABLE TEMPERATURE RECORDING DEVICES. The sale or storage, use or other consumption of a disposable temperature recording device in this state is subject to tax unless an exemption or exclusion from taxation applies. When a shipper of perishable food products purchases for resale a disposable temperature recording device for the sole purpose of shipping the device along with the products it ships, the shipper of the perishable food products does not make a taxable use of the disposable temperature recording device merely by starting the recording device in this state. If, pursuant to a perishable food product shipper's contract with its customer, the shipper provides a recording device along with perishable food products to an out-of-state point, the shipper's sale of the device constitutes an exempt sale in interstate commerce pursuant to Revenue and Taxation Code section 6396. The provisions of this paragraph do not, however, apply to the sale or lease of non-disposable temperature recording devices.</u></p>

Issue Paper Number **03 - 001**



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and
Administrative Efficiency
Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Disposable Temperature Recording Devices Regulation 1630, Packers, Loaders, and Shippers

I. Issue

Should Regulation 1630, *Packers, Loaders and Shippers*, be amended to incorporate the Susan Lorie Tylock Memorandum Opinion dated February 25, 1999, regarding the application of tax to sales of disposable temperature recording devices?

II. Staff Recommendation

As agreed upon by staff and industry representatives, staff recommends that the Board authorize publication of the proposed amendments to Regulation 1630 as illustrated in Exhibit 2. Staff recommends adding subdivision (b)(3) to incorporate the application of tax to disposable temperature recording devices to include the findings in the Susan Lorie Tylock Memorandum Opinion. Staff recommends no operative date for this amendment. See Issue Paper pages 2-8, and Agenda action item 1.

III. Other Alternative(s) Considered

Make no changes to Regulation 1630.

Issue Paper Number: **03 - 001**

IV. Background

Regulation 1630 was last amended in 1999 to clarify that tangible personal property purchased and physically incorporated into the finished product being sold can be purchased for resale. In addition, the amendments included the clarification that, under specific circumstances, tax does not apply to the sale or purchase of preservative products.

Application of Tax

Regulation 1630, *Packers, Loaders and Shippers*, governs the application of tax to (1) property used to condition, preserve or protect goods during shipment and (2) property used as containers or part of containers of goods shipped. In general, tax applies to sales to shippers of property used to condition, preserve or protect goods during shipment.

The current provisions of Regulation 1630 do not address the application of tax to disposable temperature recording devices as they are not used to condition, preserve and protect goods during shipment; furthermore, they are not considered containers or parts of containers and are not physically incorporated into the final product being sold.

In the Susan Lorie Tylock Memorandum Opinion (“Tylock Memorandum Opinion”), the Board concluded that when a shipper of perishable food products purchases a disposable temperature recorder for the sole purpose of shipping the device along with the products the shipper ships, a shipper does not make a taxable use of a disposable temperature recording device merely by starting the recording device in this state.

Interested parties meetings were held on December 11, 2002 and January 16, 2003. Various industry representatives were present at these meetings. No public comments or suggestions were received at or following the meetings. The Business Taxes Committee is scheduled to discuss this issue at its meeting on March 26, 2003.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends amending Regulation 1630 by adding subdivision (b)(3) to incorporate the application of tax to disposable temperature recording devices, as illustrated in Exhibit 2, to include the findings in the Tylock Memorandum Opinion (see Exhibit 3). Staff recommends no operative date for this amendment.

Since the distribution of staff’s second discussion paper, various non-substantive changes were made to the proposed text of the regulation. These amendments do not change the current application of tax to disposable temperature recording devices as stated in the Tylock Memorandum Opinion. Rather, these changes are for clarification of the application of tax.

To clarify and better reflect the meaning and the language of the Tylock Memorandum Opinion, the words “produce shipper” were replaced with the words “shipper of perishable food products.” Moreover, a sentence was added to clarify that the provisions of subdivision (b)(3) do not apply to the sale or lease of non-disposable temperature recording devices.

Issue Paper Number: **03 - 001**

The proposed amendments to the regulation with recent changes indicated by stricken and double-underlined text are as follows:

1630(b)

(3) DISPOSABLE TEMPERATURE RECORDING DEVICES. The sale or storage, use or other consumption of a disposable temperature recording device in this state is subject to tax, unless an exemption or exclusion from taxation applies. When a produce shipper of perishable food products purchases for resale a disposable temperature recording device for the sole purpose of shipping the device along with the products it ships produce the shipper sells, the a produce shipper of the perishable food products or a carrier does not make a taxable use of the a disposable temperature recording device merely by starting the recording device in this state. If, pursuant to a perishable food product produce shipper's contract with its customer a purchaser, the produce shipper provides ships a recording device along with perishable food products produce to an out-of-state point, the produce shipper's sale of the device is constitutes an exempt sale in interstate commerce pursuant to under Revenue and Taxation Code section 6396. The provisions of this paragraph do not, however, apply to the sale or lease of non-disposable temperature recording devices.

Following is a description of transactions regarding disposable temperature recording devices and how tax applies to their sales.

Introduction, Terminology

Produce sellers (shippers of perishable food products) are predominately brokers who transport fruit, vegetables, and other perishable food products from producer to wholesaler for eventual consumption by the public. Growers may also operate as shippers of perishable food products. *Produce buyers* (generally wholesalers and super market chains) are the ultimate purchasers of perishable products, who require the shipper of perishable food products to ensure that the perishable product has not been subjected to extreme temperatures during shipment. This is accomplished by including a pre-activated disposable temperature recorder with the shipment to monitor the temperature of the perishable products en route.

The shipper of perishable food products purchases the recorder from the disposable temperature recorder supplier who is either a manufacturer or distributor of the device. Generally, the shippers of perishable food products activate the disposable temperature recorder by pulling a tab. The recorder is then placed in the truck or rail car and the perishable food product is shipped. When the shipment arrives at its destination, the recorder is accessed, and the data read by either the recorder supplier or the buyer of the perishable food product to verify that the temperature has remained within the desired range during shipment.

Temperature Verification Service. In some cases, the data provided by the device cannot be read by the buyer of the perishable food product. The device must be returned to the supplier for reading and/or verification. In this instance, ownership of the device remains with the manufacturer or distributor, who is considered to be providing a service rather than selling the device. However, due to technological advances in the recorder manufacturing industry, this method is no longer widely used.

Issue Paper Number: **03 - 001**

Sale of Temperature Recording Device

In the scenario described below, it is assumed that the shipment commences in California with the device activated prior to shipment.

Description: The disposable temperature recorder is sold by the supplier to the shipper of perishable food products, who arranges for it to be placed in a shipping container and activated. Neither the supplier nor the shipper of perishable food products is required to perform any further duties with respect to the device, and neither retains ownership of the device, which may be treated as disposable. (Although in rare instances the supplier may, upon request, provide a post-trip verification of the accuracy of the recorder, there are generally no special service contracts or agreements beyond the sales invoice showing the sale of the recorder.)

When the shipment arrives at its destination, the buyer of the perishable food product can access the recorder and verify that the temperature has remained within the desired range during shipment. The shipper of perishable food products generally makes a separate charge to his or her customer for the device. In calculating this charge, the shipper typically marks up the cost he or she has paid to the supplier for the device.

Application of Tax: The disposable temperature recorder supplier is making a sale for resale to the shipper of perishable food products, who in turn makes a retail sale of the device to the buyer of the perishable food products. The tax applies to the sale of the disposable temperature recorder by the shipper of perishable food products, unless the transaction is exempt or excluded from tax, (i.e., a sale in interstate commerce). If the shipper of perishable food products ships a disposable temperature recording device with perishable food products to an out-of-state point pursuant to the contract of sale, the shipper's sale of the device is an exempt sale in interstate commerce pursuant to RTC section 6396.

Tax Liability: In general, the sale of the disposable temperature recorder by the recorder supplier to the shipper of perishable food products in this state is a sale for resale, and therefore it is not subject to tax. The supplier has no tax liability for the transaction if he or she timely accepts a valid and timely resale certificate in good faith from the shipper of perishable food products for the device. If the shipper of perishable food products is not required to hold a seller's permit because all of their sales are either of exempt food products or in interstate commerce, the shipper should indicate on the resale certificate in place of a permit number, "I am not required to hold a seller's permit since I only make sales in interstate and foreign commerce."

The sale of the disposable temperature recorder by the shipper of perishable food products may be subject to tax when the sale occurs in California. For example when the shipment begins and ends in California, the sale occurs in California, and tax would apply to the sale of the recorder to the buyer of perishable food products. If the disposable temperature recorder is placed in a shipment making a continuous journey to an out-of-state location pursuant to the contract of sale, and the disposable temperature recorder is received by the buyer of perishable food products at the out-of-state location, the sale qualifies as a sale in interstate commerce under RTC section 6396 and is exempt from tax.

Issue Paper Number: **03 - 001**

B. Pros of the Staff Recommendation

Promulgates in regulatory form the application of tax to sales of disposable temperature recording devices.

C. Cons of the Staff Recommendation

Requires regulatory change.

D. Statutory or Regulatory Change

No statutory change is required. Staff proposes that amendments to regulation be adopted.

E. Administrative Impact

Staff will notify taxpayers about the amendments to the regulation and will do so through a Tax Information Bulletin article.

F. Fiscal Impact

1. Cost Impact

There will be no additional costs. Staff will notify taxpayers of the amendments to the regulation through a Tax Information Bulletin (TIB) article. The workload associated with publishing and distributing the TIB is considered routine and any corresponding cost would be within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Since the proposed regulation provides clear guidance to taxpayers regarding the application of tax to disposable temperature recording devices, staff expects that this regulation will improve compliance.

H. Critical Time Frames

None. Implementation will occur 30 days after approval by the Office of Administrative Law.

Issue Paper Number: **03 - 001**

VI. Alternative 1

A. Description of the Alternative

Make no changes to Regulation 1630.

B. Pros of the Alternative

No regulatory change is required.

C. Cons of the Alternative

Will not promulgate in regulatory form the application of tax to sales of disposable temperature recording devices.

D. Statutory or Regulatory Change

None.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

None.

H. Critical Time Frames

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: March 7, 2003

REVENUE ESTIMATE
(REV. 4/98)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



BOARD OF EQUALIZATION
REVENUE ESTIMATE
ISSUE 03-001

DISPOSABLE TEMPERATURE RECODING DEVICES
REGULATION 1630, PACKERS, LOADERS AND SHIPPERS

Staff Recommendation

As agreed upon by staff and industry representatives, staff recommends that the Board authorize publication of the proposed amendments to Regulation 1630 as illustrated in Exhibit 2 of the Issue Paper. Staff recommends adding subdivision (b)(3) to incorporate the application of tax to disposable temperature recording devices to include the findings in the Susan Lorie Tylock Memorandum Opinion. Staff recommends no operative date for this amendment.

Alternative

Make no changes to Regulation 1630.

Background, Methodology, and Assumptions

There is nothing in the proposed amendments to Regulation 1630 that would impact revenues.

Alternative 1:

Alternative 1 has no revenue effect.

Revenue Summary

The staff recommendation has no revenue effect.

The alternative proposals have no revenue effect.

Preparation

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of February 5, 2003

Regulation 1630. PACKERS, LOADERS, AND SHIPPERS

Reference: Sections 6007, 6359.7, 6359.8, and 6364, Revenue and Taxation Code

(a) IN GENERAL - DEFINITIONS. Packers, loaders, and shippers (hereinafter collectively called "shippers") purchase tangible personal property to be used in conditioning the goods to be shipped and to preserve, protect, and contain the goods during transportation. Such property includes, but is not limited to, the following:

(1) PROPERTY USED TO CONDITION THE GOODS FOR SHIPMENT OR TO PRESERVE AND PROTECT THE GOODS DURING SHIPMENT.

bracing materials	gas (including dispensers)
car strips	ice and dry ice
cleaning compounds	miscellaneous preservatives
degreasing compounds	rust preventing compounds
derusting compounds	salt
dunnage or "loose" lumber	solvents
(except as otherwise	tarpaulin (weather protection)
specified in (2) below)	

(2) PROPERTY USED AS CONTAINERS OR AS PARTS OF CONTAINERS OF THE GOODS SHIPPED.

bags	gummed tape
barrels	kegs
bottles	lumber (including "loose" lumber
boxes	used in the same manner and for
cans	the same purpose as pallets)
carboys	pallets
cartons	sacks
crates	strapping
cylinders	twine
drums	wrapping paper
excelsior and other packing	
and crating material	

(3) PROPERTY THAT WHEN PHYSICALLY INCORPORATED IN THE FINAL PRODUCT BEING SOLD IS A SALE FOR RESALE.

wax and fungicide	protective coatings
post harvest protective shields	salts, acids & caustics

(b) APPLICATION OF TAX.

(1) PROPERTY USED TO CONDITION, PRESERVE OR PROTECT GOODS DURING SHIPMENT.

(A) General. Tax applies to sales to shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods during transportation. It is immaterial whether or not a separate charge or separate billing is made by the shipper for the particular item, that it may not be returned to or reused by the shipper, that the goods are shipped in interstate or foreign commerce, or that the shipper's contract is with the United States. The property is purchased by the shipper for a purpose other than resale, i.e., conditioning the goods, or preserving and protecting the goods during shipment. Thus, the sale to the shipper is a retail sale, even though he or she may not retain title to the property used by him or her.

(B) Ice, Carbon Dioxide and Preservatives.

1. Ice. The sale or use of ice or dry ice used in packing and shipping or transporting food products for human consumption is exempt from tax when the food products are shipped or transported in intrastate, interstate or foreign commerce by common carriers, contract carriers, or proprietary carriers.

2. Carbon Dioxide. Operative January 1, 1995, the sale or use of carbon dioxide used in packing and shipping or transporting fruits or vegetables for human consumption is exempt from tax when the fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers provided the fruits or vegetables are not sold to the ultimate consumer in the package that contains the carbon dioxide.

3. Preservatives. Tax does not apply to the sale or purchase of preservative products under the following two circumstances:

a. The preservative product is included in the shipping container of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These include moisture-absorbing desiccants, gas-absorbing ethylene sachets, and gas emitting sulfur dioxide pads or similar products.

b. The preservative product serves a beneficial purpose in preserving the food product and remains in the packaged food product until opened by the ultimate consumer. This includes nitrogen gas used to maintain an inert atmosphere in packaged food products which remains in the packaged food as a preservative until opened by the consumer; and moisture absorbing desiccants included in individual packages of beef jerky which remain sealed until opened by the consumer.

(2) PROPERTY USED AS CONTAINERS OR PARTS OF CONTAINERS OF GOODS SHIPPED.

(A) General. Tax applies to the sale or use of containers or container materials under the provisions of Regulation 1589, "Containers and Labels", (18 CCR 1589). However, except as provided in paragraph (b)(2)(C), when the shipper is not the seller of the contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sale unless the shipper expressly contracts with his or her customer for the sale to his or her customer of the container or container material, making a separate charge therefor, with title passing from the shipper to his or her customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper for reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier of the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.

(B) Carbon Dioxide. Operative January 1, 1995, the sale or use of nonreturnable container materials containing carbon dioxide atmosphere is exempt from the tax when used in packing and shipping or transporting fruits or vegetables in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers, whether or not the shipper is the seller of the fruits or vegetables.

(C) Packing Food Products for Human Consumption. Sales tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale.

(3) DISPOSABLE TEMPERATURE RECORDING DEVICES. The sale or storage, use or other consumption of a disposable temperature recording device in this state is subject to tax unless an exemption or exclusion from taxation applies. When a shipper of perishable food products purchases for resale a disposable temperature recording device for the sole purpose of shipping the device along with the products it ships, the shipper of the perishable food products does not make a taxable use of the disposable temperature recording device merely by starting the recording device in this state. If, pursuant to a perishable food product shipper's contract with its customer, the shipper provides a recording device along with perishable food products to an out-of-state point, the shipper's sale of the device constitutes an exempt sale in interstate commerce pursuant to Revenue and Taxation Code section 6396. The provisions of this paragraph do not, however, apply to the sale or lease of non-disposable temperature recording devices.

5710 SALES AND USE TAX MEMORANDUM OPINIONS

2001-1

SUSAN LORIE TYLOCK

A produce shipper may purchase for resale disposable temperature recording devices for the sole purpose of shipping the devices with produce the shipper sells. The produce shipper or the carrier does not make a taxable use of the devices merely by starting them in this state.

If, pursuant to its contract with the purchaser, the produce seller ships the device with the produce to an out-of-state point, the produce shipper's sale of the device is an exempt sale in interstate commerce under Revenue and Taxation Code section 6396.

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition for Redetermination under the Sales and Use Tax
Law of SUSAN LORIE TYLOCK Petitioner*

Appearances:

For Claimant:

David Colker, Attorney

For Business Taxes

Appeals Review Section:

Susan Wengel

Assistant Chief Counsel

For Sales and Use

Tax Department:

Gary J. Jugum, Assistant Chief Counsel

Warren Astleford, Senior Tax Counsel

MEMORANDUM OPINION

Before the Board in this case is the application of sales tax to petitioner's charge for disposable temperature recording devices (temperature recorders) which petitioner sold to shippers of perishable agricultural produce. The function of the temperature recorders petitioner sold was to track and record temperatures of the produce while it was in possession of a common carrier who transported the produce in a conveyance (e.g., vehicle or rail car) from the produce shipper to the produce purchasers.

The temperature recorders are capable of recording temperatures over a period of 10, 15, or 30 days. Generally, the produce purchaser uses the data from the temperature recorder to verify whether the common carrier maintained the proper temperature inside the vehicle or rail car in which the carrier transported the produce. For example, if the produce were to reach the destination damaged, the purchaser could determine from recordings made by the temperature recorder whether the damage was caused by the carrier's failure to maintain proper temperature levels in the vehicle or freight car during transportation.

In a typical transaction, petitioner purchased a temperature recorder from the manufacturer and sold it to a produce shipper who had a contract to supply produce to an out-of-state buyer. The produce shippers separately listed on their invoice to the purchaser the charge for the temperature recorder and the charge for the produce. In all cases in issue, the produce shippers were required to ship the produce and the temperature recorders to a point outside of this state. The produce shippers contracted with the common carriers to perform that transportation. The produce

shipper marked the recorders for identification purposes and either started the recorders when the recorders were placed on the carrier's conveyance or merely transferred possession of the temperature recorder to the carrier's employee who would start the recorder on the conveyance.

If the carrier delivered the produce to the out-of-state destination damaged, the produce purchaser shipped the temperature recorder to the recorder's manufacturer which interpreted the recorded temperature data. The produce buyer could then determine if it had evidence to support a claim for damages against the carrier for not maintaining the proper temperature of the perishable goods. If the produce arrived at the destination undamaged, the produce buyer could discard the temperature recorder or could return it to the manufacturer for a "refund allowance". The recorders were never returned to petitioner, the produce shipper, or the carrier.

OPINION

We conclude that petitioner's sales of temperature recorders to produce shippers were nontaxable sales for resale; that is, the produce shipper purchased the temperature recorders to sell to the purchaser of the produce to whom the produce and the temperature recorders were shipped. We found that neither the produce shipper nor the carrier made a use of the temperature recorders merely by starting them in this state on the carrier's vehicle or rail car.

We conclude that the produce shippers were required, pursuant to their contract with the produce buyers, to ship the temperature recorders to a point outside of this state and did so ship the temperature recorders to the out-of-state point by means of the common carrier of the produce. Accordingly, the produce shippers' sales of the temperature recorders to the out-of-state produce buyers were exempt sales in interstate commerce under Revenue and Taxation Code section 6396.

Done at Sacramento, California, this 25th day of February, 1999.

Dean F. Andal, Member

Claude Parrish, Member

John Chiang, Member